IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22350 of 2004

Between:

M.B.V.Maheswarlu, S/o.Venkata Subbanna Chowdary,
aged 57 years, working as Assistant Manager (Elec)

R/o. D.No.39-27-3, NH5, Appayyanagar,
Marripalem PO, Visakhapatnam-530018.

..... PETITIONER

AND

1 Food Corporation of India, rep.by its Manager (P&IR), Head Quarters,

16-20, Barakhamba Lane, New Delhi.
2 Food Corporation of India, rep.by its Zonal Manager, Zonal office,

Chennai-60006.
3 Food Corporation of India, rep.by its Senior Regional Manager,

Regional office, Hyderabad-50004.
4 Food Corporation of India, rep.by its District Manager, District office,

Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a writ one in the nature of Mandamus declaring (i) the action of the 2nd respondent in not finalizing/ accepting the letters dt.06-10-2004 and 25-11-2004 submitted by the petitioner withdrawing the request/application dt.09-09-2004 seeking voluntary Retirement from service, as illegal, arbitrary and contrary to circular No.EP14(1)/99 (Circular No.EP-01-2004 -22), dt.22-09-2004 of the 1st respondent and to the settled principles laid down by the Supreme court and

consequently direct the respondents to follow the circular No.EP14(1)/99 (circular No.EP-01-2004-22), dt.22-09-2004 of the 1st respondent for accepting the letters dt.06-10-2004 and 25-11-2004 submitted by the petitioner for withdrawing the voluntary retirement submitted on dt.09-09-2004 and allow the petitioner to continue to service as Assistant Manager (Electrical) before the 4th respondent.

Counsel for the Petitioner: MR.A.SRINIVASA SARMA

Counsel for the Respondent Nos.1 to 4: MR.B.ANJANEYULU

The Court made the following:

ORDER:

The petitioner is working as an Assistant Manager in the 4th respondent Corporation. The respondent Corporation introduced Voluntary Retirement Scheme (for short 'VRS') vide Circular No.EP-01-2004/16, dated 29.06.2004, which would operate for a period of three months from the date of Circular. The petitioner being eligible person, made an application on 09.09.2004, giving option for VRS. On 06.10.2004 he made another application to withdraw his option to exercise VRS. But the respondents did not pass any order on his withdrawal application. According to him, the VRS is not a statutory one, but issued in the interests of the organization. As he withdrawn his option for VRS by virtue of an application dated 06.10.2004, he has got right to continue in service. On the apprehension that the respondent may relieve him from service without considering his withdrawal applications dated 06.10.2004 and 25.11.2004, he filed this writ petition seeking direction to the respondent to finalise his withdrawal applications and to continue him in service.

The learned counsel appearing for the petitioner vehemently contended that the petitioner has rightly exercised his option to withdraw from the voluntary retirement scheme through his

applications dated 06.10.2004 and 25.11.2004 before the acceptance by the competent authority and therefore, he prays not to finalise the option of the petitioner for VRS. On the other hand, the learned counsel appearing for the respondents contended that the VRS introduced by the respondent corporation is not challenged as per one of the clauses in the scheme. Once an option is given, it shall be final and after accepting VRS, the employee has no right to withdraw his option. But however discretion is conferred upon the competent authority to accept it or reject the same. Therefore, he prays to dismiss the writ petition.

The factual matrix is not in dispute. The respondent Corporation has introduced the VRS in the year 2004. The petitioner is eligible to submit his option for VRS, and accordingly, he made an application on 09.09.2004 opting to retire from service voluntarily. But thereafter, he made an application on 06.10.2004 requesting the 2nd respondent to permit him to withdraw his option submitted on 09.09.2004 for VRS, and also further requested to continue in service. He also made another application on 25.11.2004 for the same relief, but the respondents have not passed any orders. According to the voluntary retirement scheme, it is valid for a period of three months from the date of issue of Circular dated 29.06.2004. Clause-VIII (d) of the Voluntary Retirement Scheme is the relevant for determining issue involved in this case, which reads as follows:

> "Once an employee submits his application for voluntary retirement under this scheme to the competent authority, it shall be treated as final and it is open to the employee to withdraw the same. The competent authority even in this period (three months) shall take a decision to accept or reject the request and shall communicate the same to the official concerned."

So the above clause is very clear that once the employee exercises option, it shall be final and as far as employee is concerned, it is not open to withdraw the same. However, the discretion is given to the competent authority to accept or reject the same. By virtue of proceedings dated 21.10.2004 the competent authority accepted

VRS applications of the employees including the present petitioner. As seen from these proceedings, the petitioner has to be relieved on 09.12.2004 FN. The Zonal office, Chennai by its letter dated 21.10.2004 has communicated the acceptance of VRS sought for by Category-II officers and the same was communicated to the District Managers of the Food Corporation of India. The petitioner is one among them. No doubt the scheme introduced by the respondent Corporation has no statutory force in view of the decision reported in ***Chittoor Co-operative Sugar Factory Employees Union, Chittoor vs. Chittoor Coop.Sugar Factory Ltd.,Chittoor***. Though the above scheme has no statutory force, but however, the petitioner wanted a Mandamus from this Court. It is a settled law that this Court while exercising powers under Article 226 of the Constitution of India, cannot direct the authorities to act contrary to the provisions of the Statute or the Rules or even the scheme framed for a particular purpose.

The option of the petitioner under VRS has been accepted and the same was communicated to the petitioner. So it cannot be said that the proceedings are contrary to the Circular or the scheme framed by the respondent Corporation.

The learned counsel for the petitioner relied upon a decision reported in ***Shambhu Murari Sinha vs. Project & Development India Ltd.,*** wherein it was held

> "A Constitution Bench of this Court in Union *of India & Others vs.Gopaal Chandra Misra & Others (1978) 2 SCC 301) in paragraph 50* held that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and 'it becomes effective when it operates to terminate the employment or the office-tenure of the resignor'. (emphasis ours). As stated above in the present case in the VRS, there was no indication regarding effective date or voluntary resignation and there is also no condition that once it was accepted it could not be withdrawn."

But in this case a condition was incorporated in the VRS. Once an application was made for VRS, it shall not be withdrawn.

The learned counsel also relied upon a decision reported in ***General Manager, BHEL, R & D, Hyd. Vs. K.Rajita Suryakanta*** wherein it was held

> "Mere passing of the order by itself would not terminate the relationship of master and servant as the management is always at liberty to withdraw the order passed before the same is implemented."

In the above case resignation was withdrawn before the same was accepted. Therefore, the Division Bench found that master and servant relationship is in existence, as the resignation was not accepted.

The learned counsel for the petitioner placed reliance on another decision reported in ***Khaja Masiuddin vs. Andhra Pradesh State Road Transport Corpn.*** Wherein it was held

> "As already indicated above when the letter of withdrawal was acknowledged by the Regional Manager, appropriate steps ought to have been taken by such an authority to communicate the same to the Competent Authority whosoever it be."

The petitioner in this case has submitted an application withdrawing his option for VRS and the same was not accepted or rejected as no communication has been sent. The discretion vests with the management to accept it or reject it as per the one of the conditions of the VRS. Once an application is made for VRS, the employee cannot withdraw it. Hence the above decision has no application.

The learned counsel for the petitioner also placed reliance on a decision reported in ***V.S. Prakasa Rao vs. Commissioner of Sports etc.*** wherein it was held

> "…..It is always permissible for an employee to withdraw the resignation even if it is accepted by the employer unless the acceptance of resignation has already become effective and operative."

As already observed by this Court that once option for VRS is given,

it shall be final.

To the same effect, the learned counsel for the petitioner relied upon a decision reported in ***National Thermal Power Corpn. Vs. S.Phartha (A.P)*** wherein it was held

> "While it is the unqualified right of the employee to tender resignation, yet in given circumstances there may be no unqualified right for its acceptance as the employer may, for relevant reasons such as his dues have not been cleared or the employee is facing any proceeding, refuse to accept the resignation as accepting that would mean the cessation of the relationship of master and servant and the employee becoming free from any control of the employer."

The above decision has no application to the present facts of the case. Basing on the factual aspects the above decisions have been rendered. In the absence of any clause, the competent authority has to communicate the acceptance or rejection of VRS of an employee if an employee withdrew his application for VRS before acceptance, the same can be acted upon. So the employee has got right to withdraw the same before acceptance of VRS. Therefore, none of the decisions cited by the learned counsel for the petitioner applies to the case on hand because in this case there is a specific clause in the voluntary retirement scheme that once an application is made under VRS, it shall be final and the employee has no option to withdraw it. However, an option is given to the employer either to accept it or reject it.

Therefore, the writ petition is totally devoid of merit and liable to be dismissed. Accordingly, the Writ Petition is dismissed at the stage of admission.

Dated: 09.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Manager (P & IR),

Food Corporation of India,

Head Quarters, 16-20, Barakhamba Lane,

New Delhi

2. The Zonal Manager,

Food Corporation of India,

Zonal Office,

Chennai-600 006

3. The Senior Regional Manager,

Food Corporation of India,

Regional Office, Hyderabad-500 004

4. The District Manager,

Food Corporation of India,

District Office, Visakhapatnam

5. Two CD copies.